

DEPARTMENT OF SOCIAL SERVICES

744 P Street, M.S. 19-31

Sacramento, CA 95814

(916) 445-7964



August 28, 1981

ALL-COUNTY LETTER NO. 81-93

TO: ALL COUNTY WELFARE DEPARTMENTS
ALL PUBLIC AND PRIVATE ADOPTION AGENCIES
ALL DEPARTMENT OF SOCIAL SERVICES DISTRICT OFFICES

SUBJECT: Religious Requirements in Adoptive Placements

REFERENCE:

This letter is to remind you of the Appellate Court Decision of Scott vs. Family Ministries, Los Angeles Superior Court No. 121839, 1976. The Appellate Court upheld the decision of the trial court that children whose religious faith or that of their parents is unknown, may not be placed for adoption by private agencies which only serve adoptive applicants of a particular faith. On the basis of this decision, only those adoption agencies that serve families without regard to religion may accept such children for study or adoptive placement. Agencies which restrict intake to applicants of a particular faith should only serve children of that faith or children for whom a home of that faith is desired.

In the Appellate Court Decision, Section 30643 of Title 22, California Administrative Code, was cited. This section provides:

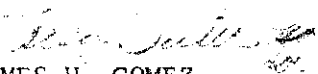
"In choosing adoptive parents for a child the agency shall select from its approved applicants the family which is best able to meet his needs."

"The child shall be placed with adoptive parents whose religious faith is the same as his own or that of his parents. Exceptions can be made in accordance with the expressed wishes of the parent(s)."

The Court's interpretation of CAC 30643 provides for "matching" to be accomplished by determining the religion of the prospective adoptive parents, that of the child to be adopted, or that of his parents, or that expressed as preferred by his parents.

Questions concerning the Appellate Court Decision and its effect on agency policy should be referred to your adoption program consultant.

Sincerely,


JAMES H. GOMEZ
Deputy Director

cc: CWDA

DEPARTMENT OF SOCIAL SERVICES

744 P Street
Sacramento, California 95814
Telephone: (916) 445-0321



August 27, 1981

ALL-COUNTY LETTER NO. 81-92

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: DAVIS v. WOODS

REFERENCE:

The purpose of this letter is to inform you of further developments in the case of Davis v. Woods concerning aid to children age 18 to 20.

You were earlier informed of the nature of the case and the issuance of a temporary restraining order on July 27, 1981 by Los Angeles Superior Court Judge Robert Weil. On Wednesday, August 12, a hearing was held before Judge Weil on plaintiffs' request for a preliminary injunction and on an Order to Show Cause why the Director should not be held in contempt for failure to implement the provisions of the temporary restraining order.

The Director was found not to be in contempt of court. The court found that the language in the Budget Act was sufficiently unclear to the Director as to his authority to fully comply with the court order. Under those circumstances, a finding of contempt was not warranted.

The court did grant plaintiffs' request for a preliminary injunction and on August 19, 1981, the court issued the preliminary injunction. A copy is attached.

The court ruled that state law and regulations were inconsistent with federal requirements. However, unlike the provisions of the temporary restraining order, the court did not require that the previous regulations be put back into effect. Rather, the court is requiring the Department and county welfare departments to implement the option permitted under federal law of aiding those age 18 to 20 who are regularly attending a course of high school study or regularly attending a course of vocational or technical training. Specifically, the injunction provides:

"...that during the pendency of this action, or until the final determination thereof, or unless and until



the state amends its laws to comply with new federal law on 18-20 year olds effective October 1, 1981, or until the court shall otherwise order, the defendants, the successors in office, agents, assigns, employees, and all persons acting in concert with them or subject to their control or supervision, including employees of county welfare departments, shall be, and hereby are, enjoined and restrained from reducing, terminating, or denying AFDC benefits of plaintiffs and all other California recipients of and applicants for AFDC who are or whose children are 18-20 years old and regularly attending a course of high school study or regularly attending a course of vocational or technical training, said vocational or technical training not provided by or through a college or university, designed to fit him for gainful employment, solely because said children are not full-time high school students. Defendants are further restrained from refusing to reinstate benefits due eligible persons effective August 1, 1981 and thereafter but whose benefits were reduced, terminated, or denied due to the policy enjoined above."

The court stayed for 30 days that part of the preliminary injunction that requires reinstatement of applicants for or recipients of AFDC who were denied or terminated from aid and who are regularly attending high school or regularly attending a course of vocational or technical training (other than through a college or university). However, the Department was ordered to take all steps necessary to prepare to reinstate aid to such persons upon expiration of the 30 day period. Therefore, you should take the following action:

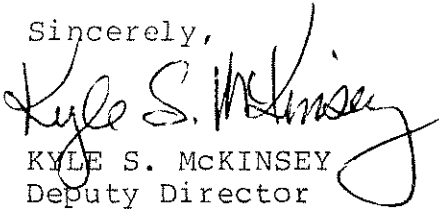
1. If you did not take action to terminate 18 to 20 year old college students, or if you rescinded such termination because of the issuance of the temporary restraining order, you should now take action to terminate, providing timely and adequate notice as required.
2. You should identify those cases where AFDC grants were reduced, terminated, or denied for applicants and recipients who were regularly attending (part-time or full-time) a high school curriculum or a course of vocational or technical training.

These actions are necessary to prepare for future reinstatement of benefits. Since the order has been stayed for 30 days, we will notify you at a later date regarding the actual payment of aid to the persons affected. When aid is reinstated retroactive to August 1, eligibility for 18, 19, and 20 year olds will be determined according to the guidelines contained in Attachment 2.

The Department will be informing the Department of Finance and the Legislature, as provided in the Budget Act, of the issuance of the preliminary injunction.

We will keep you informed of further developments in the case that require action by County Welfare Departments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kyle S. McKinsey".

KYLE S. MCKINSEY
Deputy Director

CC: CWDA

Attachments

1 BYRON J. GROSS, ESQ.
 2 Legal Aid Foundation of Los Angeles
 3 1550 West Eighth Street
 Los Angeles, California 90017
 (213) 487-3320

ORIGINAL FILED

AUG 19 1981

4 MARILYN KATZ, ESQ.
 5 RICHARD A. ROTHSCHILD, ESQ.
 Western Center on Law & Poverty, Inc.
 3535 West Sixth Street
 6 Los Angeles, California 90020
 (213) 487-7211

COUNTY CLERK

7 Attorneys for Plaintiffs/Petitioners
 8

9
 10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF LOS ANGELES
 12

13 ICILDA DAVIS, HUNG HOANG,

NO. C 375617

14 Plaintiffs/Petitioners,

) INTERLOCUTORY ORDER
) RE: PRELIMINARY
) INJUNCTION

15 vs.

16 MARION J. WOODS, Director of the
 State Department of Social Services;
 17 KYLE MCKINSEY, Deputy Director of
 the State Department of Social
 18 Services; DEPARTMENT OF SOCIAL
 SERVICES, an agency of the State of
 19 California; EDMUND G. BROWN, JR.,
 as Governor of California; STATE OF
 20 CALIFORNIA, a political entity,

21 Defendants/Respondents.
 22

23 The above matter came on for hearing on August 12, 1981
 24 pursuant to an order to show cause re preliminary injunction
 25 issued by this Court on July 28, 1981. Marilyn Katz and Richard
 26 A. Rothschild appeared as counsel for plaintiffs/petitioners,
 27 and Karen Fried appeared as counsel for defendants/respondents,
 28 Woods, McKinsey, Department of Social Services, State of California

1 (hereinafter "defendants" for purpose of the order re preliminary
2 injunction). Marilyn Mayer was also present on behalf of Edmund G.
3 Brown, Jr., Governor, and Mary Ann Graves, Director of the Depart-
4 ment of Finance.

5 This Court has considered the points and authorities on
6 file in this action, the declarations and exhibits submitted into
7 evidence, and the arguments of counsel. This Court announced its
8 opinion at the conclusion of the August 12 hearing and instructed
9 counsel to agree on the form of the order, if possible. Counsel
10 have agreed on the form of paragraphs 2 and 3 of the order re
11 preliminary injunction but have not yet agreed on the form of
12 paragraph 1 of the order concerning notice and hearing. Therefore,
13 at this time paragraphs 2 and 3 below will be entered as an
14 interlocutory order. If counsel cannot agree upon the form of
15 paragraph 1, they may each submit orders to the Court for its
16 consideration.

17 It is the opinion of the Court that:

18 1. Reserved.

19 2. Federal law requires states participating in the
20 federal AFDC program to furnish aid to all individuals eligible
21 for benefits under applicable federal standards. 42 U.S.C.
22 Section 606(a)(2)(B) and 45 C.F.R. Section 233.90 provide that
23 if a state elects to include in its AFDC program children 18 and
24 over, it must include all children 18-20 years old who are stu-
25 dents regularly attending school, college, or university or a
26 course of vocational or technical training designed to fit them
27 for gainful employment. Congress has passed a law, P.L. 96-611,
28 providing for an additional option, section (C), which premits

1 states to grant aid to 18-20 year olds regularly attending school,
2 but to exclude college students. Under section (A) defendants
3 have the option of not providing AFDC benefits to any 18-20 year
4 olds.

5 The new statutory provision, section (C), is effective with-
6 out regulations by the Secretary of HHS implementing section (C).
7 This Court holds that the new eligibility option con-
8 tained in section (C) is equivalent to the current eligibility
9 option contained in section (B) with the omission of college and
10 university students. This Court defines college students as
11 excluding those who are taking high school courses leading to a
12 high school diploma in a community college or other college or
13 university setting.

14 This Court holds that the California statute Welf. & Inst.
15 Code Section 11253, and defendants' policy which grants AFDC only
16 to those 18-20 year olds who are full-time high school students
17 violates the doctrine that requires California to aid all persons
18 eligible under federal law.

19 THEREFORE IT IS HEREBY ORDERED that during the pendency
20 of this aciton, or until the final determination thereof, or
21 unless and until the state amends its laws to comply with new
22 federal law on 18-20 year olds effective October 1, 1981, or until the
23 Court shall otherwise order, the defendants, the successors in
24 office, agents, assigns, employees, and all persons acting in
25 concert with them or subject to their control or supervision,
26 including employees of county welfare departments, shall be, and
27 hereby are, enjoined and restrained from reducing, terminating,
28 or denying AFDC benefits of plaintiffs and all other California

1 recipients of and applicants for AFDC who are or whose children
2 are 18-20 years old and regularly attending a course of high
3 school study or regularly attending a course of vocational or
4 technical training, said vocational or technical training not
5 provided by or through a college or university, designed to fit
6 him for gainful employment, solely because said children are not
7 full-time high school students. Defendants are further restrained
8 from refusing to reinstate benefits due eligible persons effective
9 August 1, 1981 and thereafter but whose benefits were reduced,
10 terminated, or denied due to the policy enjoined above.

11 IT IS FURTHER ORDERED that defendants shall effectuate
12 this order immediately and by doing the following with respect to
13 their agents, the county welfare departments:

- 14 a. informing them of the entry of this preliminary
15 injunction and providing them with a copy of
16 the order;
- 17 b. instructing them, pursuant to this order, to take
18 all steps necessary to prepare to reinstate all
19 AFDC recipients and applicants whose benefits
20 were terminated, reduced or denied, pursuant to
21 defendants' policy enjoined above, and to prepare
22 to pay all benefits due otherwise eligible appli-
23 cants and recipients effective August 1, 1981,
24 and thereafter;
- 25 c. instructing them, pursuant to this order, to
26 reinstate, effective August 1, 1981, all AFDC
27 recipients and applicants whose benefits were
28 terminated, reduced or denied pursuant to

1 defendants' policy enjoined above and to pay
2 all benefits due otherwise eligible recipients
3 effective August 1, 1981 and thereafter.

4 This paragraph shall be stayed 30 days to allow
5 notice to the Director of Finance and to the
6 State Legislature. (See Paragraph 3, infra.)

7 3. Defendants claim that the state Budget Act of 1981
8 precludes this Court from causing funds to be expended by enjoin-
9 ing defendants' illegal policy. The Budget Act of 1981 appropri-
10 ates more than \$2.9 billion for AFDC benefits and related ser-
11 vices for the fiscal year July 1, 1981 through June 30, 1982.
12 It also contains two provisos to the AFDC appropriation. One
13 of the provisos states in part, "no funds are appropriated or
14 available . . . for welfare rules, regulations or All-County
15 Letters for court orders, for which funds are not specifically
16 appropriated in this act, until a final court decision on the
17 merits is issued." Budget Act of 1981, Chapter 169, at 44.
18 This Court holds that that proviso violates the separation of
19 powers clause of the California Constitution (Article III,
20 Section 3). Mandel v. Myers, 29 Cal. 3d 531 (1981); State Board
21 of Education v. Levit, 52 Cal. 2d 441 (1959).

22 The second Budget Act proviso that applies to AFDC--Budget
23 Act of 1981, at 43--provides that the Director of Social Services
24 cannot implement AFDC policy before it is approved by the Director
25 of Finance. In addition, an AFDC policy which causes the expen-
26 diture of more than \$500,000 cannot be approved by the Director
27 of Finance until 30 days after she has notified the chairs of
28 the Appropriations and Joint Legislative Budget Committee of the

1 policy's necessity. For the reason stated above, this Court holds
2 that the proviso cannot excuse defendants from compliance with
3 the preliminary injunction duly issued by this Court. However,
4 defendant Woods is permitted a 30-day notice period to the
5 Director of Finance and to the Legislature prior to the actual
6 provision of benefits to recipients under Paragraph 2,c of
7 this Order.

8 THEREFORE IT IS HEREBY ORDERED that the reinstatement
9 and payment of the AFDC benefits due the eligible plaintiffs
10 and other eligible AFDC applicants and recipients under
11 Paragraph 2,c of this Court's order be stayed for 30 days to
12 allow notice to the Director of the Department of Finance and
13 to the State Legislature. This stay shall not be construed to
14 permit delay of any and all actions necessary to prepare for the
15 actual provision of benefits at the end of that 30-day period
16 e.g., identification of recipients who will be eligible for
17 benefits effective August 1, 1981.

18 This order is prohibitory, and unless otherwise stayed,
19 its provisions are effective immediately. No bond required.

20
21 Approved as to form.

K.F.
Karen Fried,
Assistant Attorney General

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23
24
25 Dated: AUG 19 1981

26
27
28
WELL.

JUDGE OF THE SUPERIOR COURT

GUIDELINES FOR IMPLEMENTATION OF PRELIMINARY INJUNCTION -

DAVIS v. WOODS

A child age 18, 19, or 20 is eligible for AFDC only if he or she is participating in one of the following:

- (a) a curriculum of study leading toward a high school diploma, or
- (b) a program of vocational or technical training designed to prepare participants for gainful employment, other than a program provided by or through a college or university where such college or university grants post-secondary degrees. The use of the word "college" in the name of the vocational or training school (such as beauty college or business college) shall not, by itself, constitute a college or university program under this definition.

The participation requirement must be met under one of the following definitions:

- (a) enrolled in and physically attending a full-time high school curriculum or vocational or training program as defined above
- (b) enrolled in and physically attending at least a half-time high school curriculum or vocational or training program and either
 - (1) is regularly employed on a part-time basis, or
 - (2) is available for and actively seeking part-time employment (a child who is registered with EDD-ES or with WIN meets this requirement), or
 - (3) has a verified physical handicap precluding full-time school or training and precluding part-time employment.

For a high school curriculum, full time is 25 hours per week (or 20 hours per week if the school is in double session) and half-time is 12 hours per week. For a vocational or technical training program without work or shop experience, full time is 25 hours per week and half-time is 12 hours per week. When the program includes work or shop experience, full time is 30 hours per week and half-time is 15 hours per week. Where the full time or part-time curriculums in which the child is participating do not meet these minimum hourly requirements, the participation requirement may nonetheless be met if the program is (1) approved by the State Superintendent of Public Instruction or (2) approved or accredited by a State Agency, or (3) determined by the county to be equivalent to similar high school or training program curriculums which are approved under alternatives (1) or (2) above. Correspondence coursework does not meet the participation requirement.

For a secondary education program of vocational or cooperative training (e.g. agreement between school and business enabling students to receive high school credit for work experience) a full time curriculum consists of whatever hourly requirements are specified for the program by the sponsoring school.

The determination of whether a child meets the attendance requirement shall not be affected by the child's absence from the school or training program for official school vacations, illness or convalescence of the student, family emergency which requires absence from school, or the remainder of the month in which school or training is completed or discontinued.

A child who has completed high school will continue to meet the participation requirement so long as he or she has applied for admission to the next regular vocational or training program term or session beginning after his or her graduation from high school. A child who drops out of high school or a training program will continue to meet the participation requirement so long as the child has a plan to return to a high school or vocational or training program within that same month.

A child age 18, 19, or 20 is exempt from work registration requirements while attending a full time high school curriculum or a full time vocational or training program.